84-697

No.

Office - Supreme Court, U.S.
FILED
OCT 12 1984
ALEXANDER L. STEVAS,
CLERK

# In the Supreme Court

of the

# United States

---

OCTOBER TERM, 1984

---

TIEM-QUANG NGUYEN,
*Petitioner,*

VS.

DESPINA H. NGUYEN,
*Respondent.*

---

**Petition for a Writ of Certiorari to the Colorado Court of Appeals**

TIEM QUANG NGUYEN
Petitioner Pro Se
10019 Beach Street
Federal Heights
Denver, Colorado 80221
Tel: (303) 465-3628

108 PP

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1984

NO. _____

---

TIEM-QUANG-NGUYEN
Petitioner

v.

DESPINA H. NGUYEN
Respondent

---

# PETITION FOR A WRIT OF CERTIORARI TO THE COLORADO COURT OF APPEALS

---

TIEM-QUANG-NGUYEN
Petitioner Pro Se
10019 Beach Street
Federal Heights
Denver, CO 80221
Tel: (303) 465-3628

## QUESTIONS PRESENTED

I. WHETHER PETITIONER'S DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT OF THE UNITED STATES CONSTITUTION WERE VIOLATED WHEN HE WAS ISSUED THE WRITTEN CUSTODY INVESTIGATIVE REPORT ONLY ONE MINUTE BEFORE THE HEARING ON THE FINAL ORDERS?

II. WHETHER THE PRINCIPAL OF EQUALITY FOR PERSONS OF ALL NATIONAL ORIGINS AND THE GUARANTEE BY THE FOURTEENTH AMENDMENT, OF THE UNITED STATES CONSTITUTION OF THE EQUAL PROTECTION OF THE LAWS WERE VIOLATED BY THE TRIAL COURT'S AWARDING CUSTODY TO RESPONDENT, FINDING THAT PETITIONER, ALTHOUGH A FIT AND PROPER PARENT NEEDED TO BE EDUCATED IN THE CULTURE OF THIS COUNTRY, PARTICULARLY IN THE CULTURE'S WAY OF RAISING CHILDREN?

III. WHETHER THE DECISION OF THE TRIAL COURT CONFLICT WITH THE DECISIONS OF THIS COURT AND THE COURT OF OTHER STATES HOLDING THAT THE FOURTEENTH AMENDMENT PROHIBITS CONSIDERATIONS OF AN INTERRACIAL MARRIAGE IN CUSTODY LITIGATION?

## PARTIES TO THE PROCEEDING BELOW

All parties appear in the Caption of the case in the United States Supreme Court.

## TABLE OF CONTENTS

QUESTIONS PRESENTED FOR REVIEW.....i

PARTIES TO THE PROCEEDING BELOW.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....iv-v

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL PROVISIONS INVOLVED.....3

STATEMENT OF THE CASE.....3-15

REASONS FOR GRANTING THE WRIT.....16

CONCLUSION.....22

VERIFICATION.....22

APPENDIX.....28

# TABLE OF AUTHORITIES

Federal Cases:

Green v. McElroy, 360 U.S. 474 (1959).....11

Goldberg v. Kelly, 397 U.S. 254 (1970).....11

Wolff v. McDonnel, 418 U.S. 539 (1974).....11

State Cases:

Carle v. Carle, 503 P.2d 1050 (Alaska 1972).....12, 14

Tantilla v. Tantilla, 152 Colo. 445 at 449, 382, P.2d 798 at 799-800 (1963).....13

Myers v. Myers, 468 Pa. 134, 360 A.2d 578 (1976).....18

Commonwealth ex rel Lucas v. Kriescher, 450 Pa. 352, 299 A.2d 243 (1973).....18

Potter v. Potter, 372 Mich. 637 127 N.W.2d 320 (1964).....18

Edel v. Edel, 97 Mich. App. 266, 293 N.W.2d 792 (1980).....18

Kramer v. Kramer, 297 N.W.2d 359 (Iowa 1980)..18

Russell v. Russell, 80 Ill., App. 3d 41, 399 N.E.2d 212 (App. Ct. 1979).....18

Langin v. Langin, 2 Ill. App. 3d 544, 276 N.E.2d 822 (App. Ct. 1971).....18

United States Constitution:

Fourteenth Amendment.....9,16,17,21

Colorado State Constitution, Article 2, Section 25.....8

Federal Statutes:

28 U.S.C. Sec.1257(3).....2

The Petitioner, Tiem-Quang-Nguyen, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Colorado Court of Appeals in this proceeding on July 17, 1984.

## OPINIONS BELOW

The District Court of the City and County of Denver, State of Colorado, entered a permanent order of final judgment of April 28, 1982. This order printed in the Appendix A. The Petitioner timely appealed to Colorado Court of Appeals, which affirmed the judgment of this trial court with the opinion and later was issued by the mandate on July 17, 1984. That court's order of affirmance and opinion is printed Appendix B.

## JURISDICTION

The order of affirmance of Colorado Court of Appeals was entered on December 29, 1983. Petitioner timely filed a motion for rehearing

and motion for stay of mandate with the Colorado Court of Appeals in order to permit him to file a certiorari with the Supreme Court State of Colorado on February 23, 1984. The Colorado Court of Appeals denied the petition for rehearing, but granted motion for stay of mandate to file a certiorari with the Supreme Court, State of Colorado until March 26, 1984. Those Orders are printed in Appendix C and D. The Petitioner timely filed a certiorari with the Supreme Court, State of Colorado. On July 16, 1984 the Supreme Court, State of Colorado denied the Petitioner's Certiorari without issuing an opinion. That Court's order of denial is printed in Appendix E. Therefore, this Court's jurisdiction is invoked under U.S.C. Sec.1257(3).

## CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourteenth Amendment to the United States Constitution.

## STATEMENT OF THE CASE

Husband, a Vietnamese naturalized U.S. citizen, married wife, a Greek. The parties in this interracial marriage have a child born on September 27, 1980. The legal name given the child was TUTAM THIEP NGUYEN. On July 10, 1981, after their separation, but before the final hearing, the trial court ordered a temporary visitation of the child of six hours per week at the Children's Hospital of Denver, State of Colorado, to evaluate the parenting skills. On October 26, 1981. The trial court appointed an attorney Guardian Ad Litem represent the child Tutam Thiep Nguyen. On October 30, 1981 the trial court ordered that an investigation be

conducted for use in issuing permanent custody orders. On January 14, 1982, the trial court ordered that: A WRITTEN REPORT SETTING FORTH THE RESULT OF THIS INVESTIGATION BE FURNISHED TO THE TRIAL COURT ON OR BEFORE APRIL 8, 1982 (one week before the final hearing). That Order is printed in the Appendix F. A final hearing was held before the trial court on April 15, 1982. Present at the hearing were the child's mother represented by her attorney, the child's father appearing pro se through an interpreter, and the Court appointed Guardian Ad Litem representing the minor child Tutam Thiep Nguyen. The written custody investigative report of the court appointed Guardian Ad Litem was presented to the court for the first time at the hearing. That excerpt report is printed in the Appendix G.

On October 19, 1982, the trial court denied the Motion for new trial of the child's father, and the day after that day, some of the important exhibits in the file of this case was

destroyed without knowledge of the child's father. This Order is printed in Appendix H.

On February 15, 1983, the Petitioner filed an affidavit for designation of record on error. This affidavit is printed in the Appendix I. The Petitioner requested in this affidavit that the written custody investigative report of the court appointed Guardian Ad Litem should be submitted on record to the Colorado Court of Appeals to review this case, but this written report was retained and sealed by the trial court.

- The Colorado Court of Appeals reviewed this case without the written custody investigative report and then affirmed the trial court Order with the opinion on December 29, 1983.
- Motion for rehearing was denied by the Colorado Court of Appeals on February 23, 1984.
- Motion for stay of mandate to file a

Certiorari with the Supreme Court, State of Colorado, was granted until March 26, 1984.

The Supreme Court, State of Colorado, reviewed this case, not only without the written custody investigative report, but also did not issue its own opinion.

Thus, the Colorado Court of Appeals issued the mandate on July 17, 1984. The report which this suit challenged stated in part as follows:

OBSERVATION OF THE CHILD

The minor child appears to be healthy, attractive and happy. . .

RECOMMENDATIONS

A. That custody of the minor child be granted to the petitioner (the wife).

B. That the legal name of the chile be Mary Tutam Thiep Nguyen.

C. That the court order that weekly visitation for a period of one and one-half hours continue to be supervised through Children's Hospital until said supervision is determined to no longer be required by this court or the staff at Children's Hospital, with said visitation to be increased by recommendation of Children's Hospital or further court order.

D. That the Respondent (husband) be restrained by court order from harassing or disturbing the peace of the staff of Children's Hospital or any subsequently appointed institution which is to supervise visitation.

G. That the Guardian Ad Litem is of the opinion that it would be in the best interests of the minor child for the natural father to obtain a psychological evaluation with ongoing therapy.

H. That the court recommend that Respondent (husband) utilize the mental health

services of Asian Pacific Development Center at 1840 East 18th Avenue, Denver, Colorado.

No copy of this report was ever served upon or provided to the child's father nor to the hearing, so therefore the child's father could not properly respond and be heard. No opportunity was afforded the child's father to reply to the instated reason (Vol. II, pp. 59, trial transcript).

THIS REPORT WAS MADE AVAILABLE TO HIM ONLY ONE MINUTE PRIOR TO COMMENCEMENT OF THE HEARING, contrary to the trial court's order on January 14, 1984. This order printed in the Appendix F. That the report be made available on or before April 8, 1982. Thus denying the child's father his due process right of cross-examination as guaranteed by Amendment XIV of the United States Constitution, and Article 2, section 25 of the Colorado Constitution. An appeal to the Colorado Court of Appeals timely followed. The Colorado Court of Appeals

affirmed the judgment of the trial court on December 29, 1983. A Certiorari filed timely to the Supreme Court, State of Colorado.

This Certiorari of the child's father was denied on July 16, 1984.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Fourteenth Amendment stated:

> "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; or shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Colorado state constitution, article II, section 25 stated:

> "Due process of law. No person shall be deprived of life, liberty or property,

without due process of law."

The written custody investigative report of the Court appointed Guardian Ad Litem, presented at the court on April 15, 1982 hearing was based in part on the Guardian Ad Litem's contacts with respondent's parent (the wife), the minor child's pediatrician, and three social workers. Because this report was not made available to the child's father until one minute prior to commencement of the hearing. Thus the child's father was unable to cross-examine any of the people whose statements relied upon the court appointed Guardian Ad Litem in the report. The child's father at the commencement of the case, had requested a continuance to obtain more information for his case. He stated that he was unable to read that report:

Q. Did you read Mrs. Cox's report?

A. She gave me one minute before the hearing so I cannot read it.

Q. You have the report?

A. Yes, but only one minute.

THE COURT: Did you read it?

THE WITNESS: No.

THE COURT: Did you try to read it?

THE WITNESS: I don't have time sir, (Vol. II, pp. 59, trial transcript).

The record shows that the objections of the child's father remained undisputed by the court appointed Guardian Ad Litem or the court below, thus effectively denying the child's father within his due process right of cross-examination as guaranteed by Amendment XIV of the United States Constitution. See Green v. McElroy, 360 U.S. 474 (1959); Goldberg v. Kelly, 397 U.S. 254 (1970), Wolff v. McDonnell, 418 U.S. 539 (1974).

1. The trial court relied heavily on the reasoning in the report presented by the Court appointed Guardian Ad Litem for recommending a change of name of the child in this interracial marriage was improper. The court appointed Guardian Ad Litem reasoned that the child was born by this interracial marriage should have an American rather than a Vietnamese name, because the child would be growing up in the American culture and went on to imply that the child would be unable to use a Vietnamese name with

pride (Vol. II, p. 76 Trial Transcript). This reasoning presumed that the Vietnamese culture is lower or succumbs to the American way of life and American culture. This bias shown by the trial court is improper and is irrelevant in a name change proceeding properly before the trial court. See Carle v. Carle, 503 P.2d 1050 (Alaska 1972). This reasoning is also contrary to the principle of equality for persons of all national origins. This principle is offended by the notion that a citizen of this country will be ashamed of a name which originated in any culture.

2. The trial court relied heavily on the written custody investigative report of the court appointed Guardian Ad Litem and then discriminated against the child's father within the interracial marriage, on the basis that the father of the child's culture is inferior and succumbs to compare with the mother of the child's culture in the American culture and the American way of caring and raising the children.

The trial court decided custody of the child and severely restricted only a one and

one-half hour supervised visitation provision within the interracial marriage, also contrary to precedent set by the Supreme Court, state of Colorado, when it used the following language:

> "In determining what is the best for the welfare of a child of tender years, the court must consider not only food, clothing, shelter, care, education and environment, but must also bear in mind that every such child is entitled to love, nurture, advice, and training of both father and mother, and to deny to the child an opportunity to know and associate with, love and be loved by either parent may be more serious ill than to refuse it in some part those things which money can buy." See Tantilla v. Tantilla, 152 Colo. 445 at 449, 382, P.2d 798 at 799-800 (1963).

Sure, the one and one-half hours per week ordered by the trial court within the interracial marriage does not comport with what the Supreme Court, State of Colorado believed reasonable visitation as indicated by the above quoted case. Further in regard to the child's father when he was concerned that he was unable to afford the expense of the supervised visitations, the trial court responded:

> YOUR LACK OF KNOWLEDGE OF THE CULTURE OF OUR COUNTRY, AND HOW TO RAISE CHILDREN

> FORCES US TO TEACH YOU TO DO THINGS PROPERLY AS WE DO HERE. If I was in your country, I'd have to learn to be a judge in your country. Do you understand that? SO IF YOU WANT TO HAVE VISITATION, AND YOU SHOULD HAVE, YOU WILL DO IT AS I ORDERED WITH THIS LADY TO SHOW YOU HOW TO CHANGE DIAPERS OR DO THE VARIOUS OTHER THINGS AS WE DO IT HERE, IN THE UNITED STATES. YOUR CHILD IS BEING BROUGHT UP IN THE UNITED STATES AND THEREFORE IT'S OUR CULTURE, YOU HAVE TO ASSIMILATE TO. (Vol. III, p. 6, Trial Transcript).

The trial court, at the hearing on April 28, 1982, found that both parties in this interracial marriage were fit and proper parents, subject only to the child's father being educated in the American way of caring for children. The trial court's order is printed in Appendix A.

The trial court should have placed its focus on the fitness of the parents and each parent's ability to accord the child a meaningful parent-child relationship, rather than in deciding whether one culture is more appropriate than another. See Carle v. Carle, 503 P.2d 1050 (Alaska 1972).

Americans are a combination of many different national origins. The American culture is a combination of many different

cultures from around the world. In the within actions, the father of the child is a Vietnamese and the mother of the child is a Greek.

There was no evidence presented at the final hearing that the Vietnamese culture or race were such that their child-raising techniques are known to physically endanger children's wellbeing or to significantly impair their emotional development. And there was no evidence presented at the final hearing that the Greek culture and races are good for raising children in the United States.

## REASON FOR GRANTING THE WRIT

I. THE DECISION DECIDES A FEDERAL QUESTION IN A WAY IT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT WHICH PROHIBIT EXPLICIT RACIAL AND CULTURAL CLASSIFICATIONS.

The decision of the trial court relied almost exclusively upon racial and cultural considerations in awarding custody and restricted visitation of the child in this interracial marriage. The basis of the decision of the trial court and the opinion of the Colorado Court of Appeals were that the statutes in question deprived the individuals of liberty without due process of law in violation of the Due Process Clause of the Fourteenth Amendment. The decision of the trial court and the opinion of the Colorado Court of Appeals also stigmatizes the father of the child in this interracial marriage, because of his race and his previous culture. In short, his interracial marriage had, in effect, disqualified him from being a custodial parent, thus denying the child in the within action an

opportunity to know, associate with, love and be loved by her father, a Vietnamese without any jurisdiction. The decision thus irreconcilably conflicts with many decision of this court interpreting the equal protection and due process clauses to prohibit state sponsored racial and cultural discrimination. The Equal Protection and Due Process Clause of the Fourteenth Amendment to the United States Constitution prohibit a court from considering or from relying upon the interracial marriage of the custodial parent as a ground for awarding a custody of the children.

## II. THE DECISION BELOW CONFLICTS WITH DECISIONS FROM THE COURTS OF OTHER STATES HOLDING THAT THE FOURTEENTH AMENDMENT PROHIBITS CONSIDERATION OF AN INTERRACIAL MARRIAGE IN CUSTODY LITIGATION.

The highest courts of Pennsylvania and Michigan have held impermissible the consideration of an interracial marriage in custody litigation. The courts in Iowa and Illinois consider interracial marriage although no other case so clearly rests an awarding of custody or restricted visitation upon racial and

cultural considerations as does the instant case.

Myers v. Myers, 468 Pa. 134, 360 A.2d 578 (1976).

Commonwealth ex rel Lucas v. Kriescher, 450 Pa. 352, 299 A.2d 243 (1973).

Potter v. Potter, 372 Mich. 637, 127 N.W.2d 320 (1964).

Edel v. Edel, 97 Mich. App. 266, 293 N.W.2d 792 (1980).

Kramer v. Kramer, 297 N.W.2d 359 (Iowa 1980).

Russell v. Russell, 80 Ill. App.3d, 41, 399 N.E.2d 212 (App. Ct. 1979).

Langin v. Langin, 2 Ill, App.3d 544, 276 N.E.2d 822 (App. Ct. 1971).

In this era when the courts are asked to infer the existence of racial and cultural discrimination from elaborate statistical analyses, and thousands of pages of testimony regarding motive and intent, this Court has before it a short decision of the below court in Colorado which relies upon an explicit,

impermissible racial and cultural classification to burden the Petitioner's fundamental rights. That a child can be taken away from her father because the court below judge has speculated that the minor child will suffer from a cultural and social stigmatization as a result of her mother's marriage to a Vietnamese man is shocking and cannot be sustained. The decision also promotes and gives credence to the attitude that the relationships between the oriental and whites or between the Vietnamese and American are forbidden and offensive, and therefore should be regulated.

Some individuals see this type of decision as giving them a green light to take steps to curb interracial relationships, no matter how casual, their own way.

For example, according to a St. Petersburg Times newspaper account, on March 24, 1983, two white men were sitting in a Tampa restaurant when two black men and two white women walked in. One of the white men asked a nearby woman "if niggers offended (her)." The woman then overheard one of the white men say, "I wish I

had my gun." The account continues that on his way out of the restaurant one of the white men "paused, turned and looked at the two couples and placed his hand on the knife" he was wearing on his belt. When the assistant manager of the restaurant asked one of the white men who was paying for his meal if everything was all right, the white man replied fine "except for the niggers." The assistant manager replied "I'm sorry. There is nothing I can do about that." The white man replied "yes there is" and walked out.

One of the white men had a 44-Magnum pistol in their truck and they waited in the truck for fifteen to twenty minutes for the black men to leave. Then the white men followed the black men's car for about eight miles before firing two shots into the car, killing one black man and wounding the other (The St. Petersburg Times, April 8, 1983, section B, B1, Columns 7 and 8).

No court which is sworn to uphold the constitutionally protected guarantee of equal protection of the laws can issue a decision which bows to the existence of racism as a fact

of American life. In so doing a court judicially institutionalizes and sanctions the blight the Fourteenth Amendment was designed to eradicate.

This court cannot eliminate racism and culture in American society but it can and should review this decision which has deprived the petitioner of his child because of his previous culture and race. This decision of the court below also has deprived the child in the within action an opportunity to know, associate with, love and be loved by her father because she was unlucky to be born by an <u>interracial marriage</u>.

## CONCLUSION

For the reasons set forth above, the Petitioner (father of the child) respectfully submitted that a writ of certiorari should issue to review the judgment of the Colorado Court of Appeals.

Respectfully submitted,

BY: _____

TIEM-QUANG-NGUYEN
Petitioner Pro se
10079 Beach Street
Federal Heights
Denver, Colorado 80221
Tel: (303) 465-3628

## VERIFICATION

I, Tiem-Quang-Nguyen, Petitioner in the within action, Pro se declare: I have read the foregoing petition and know the contents thereof.

I believe that the matters stated therein are true and, on that ground, I allege that the matters stated therein are true. I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct. Executed on October 24th, 1984 at Denver, Colorado.

BY: Tiem-Quang-Nguyen

Tiem-Quang-Nguyen

## STATEMENT OF MAILING

(U.S. Sup. Ct. Rule 28.2)

I, Tiem-Quang-Nguyen, the Petitioner in the within action, Pro se, on October 29th, 1984, I personally placed 40 copies of the Petition for Writ of Certiorari in sealed box, first class postage thereon fully prepaid in United States Post Office mail in Denver, Colorado and addressed to the Clerk of the United States Supreme Court. The mailing was timely made within the time established for filing a Petition For Writ of Certiorari. I declare under penalty of perjury, under the laws of State of Colorado that the foregoing is true and correct, and that this statement of mailing was mailed in the city of Denver, Colorado on this 29th day of October, 1984.

BY: Tiem-Quang-Nguyen

Tiem-Quang-Nguyen

STATE OF COLORADO)
) ss
COUNTY OF DENVER )

On October 31, 1984, before me, the undersigned, a notary public in and for said state, personally appeared Tiem-Quang-Nguyen, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same.

WITNESS my hand and official seal.

(STATE SEAL) Deborah Dunbith
1115 Grant St. Denver, CO
Notary Public for said county and state

My Commission Expires 8/6/86.

CERTIFICATE OF SERVICE BY MAIL

I, Tiem-Quang-Nguyen declare: I am a party to the within action, Pro se On October 24th, 1984, I served the within PETITION FOR WRIT OF CERTIORARI (Colorado Court of Appeals Case No. 82 Ca 1396, trial Court Case No.: 80DR 3262) by placing a true copy thereof enclosed in a sealed envelope with first class postage thereon fully prepaid in a United States Post Office at Denver, Colorado addressed to the Respondent as follows: (3 copies)

George Francis, Attorney at Law
670 Capital Life Center
Denver, Colorado 80203.

and to:

Honorable Alvin D. Lichtenstein
District Court Judge
City and County Building
Denver, Colorado 80202

Colorado Court of Appeals
2 East Fourteenth Avenue
Denver, Colorado 80203.

I declare under penalty of perjury under the laws of the State of Colorado that the foregoing is true and correct.

Executed on October 29th, 1984 at Denver, Colorado.

BY: _____

Tiem-Quang-Nguyen, Pro se

## APPENDIX

APPENDIX A - Permanent Orders of the trial Court entered April 28, 1982.

APPENDIX B - Mandate and Opinion of the Colorado Court of Appeals was issued on July 17, 1984 and December 29, 1983.

APPENDIX C - Orders of the Colorado Court of Appeals denying Petition for rehearing, dated February 23, 1984.

APPENDIX D - Order of the Colorado Court of Appeals granting motion for stay of Mandate dated February 28, 1984.

APPENDIX E - Order of the Supreme Court, State of Colorado denying Petitioner's Writ of Certiorari dated July 16, 1984.

APPENDIX F - Excerpt from trial record, the Court ordered an investigation with a written report be furnished on or before April 8, 1982.

APPENDIX G - Excerpt from the written report of the Court appointed Guardian Ad Litem.

APPENDIX H - Order to destroy some of the important exhibits in the file of this case.

APPENDIX I - Excerpt from Affidavit for designation of record.

APPENDIX J - Excerpt from trial transcript (Vol. II p. 76).

APPENDIX K - Excerpt from trial transcript (Vol. II, p. 59).

APPENDIX L - Excerpt from trial transcript (Vol. III, p. 6).

APPENDIX A

DISTRICT COURT, CITY AND COUNTY OF DENVER

STATE OF COLORADO

Civil Action No. 80 DR 3262, Courtroom 4

- - - - - - - - - - - - - - - - - - - - - - - - - - - -

PERMANENT ORDERS

- - - - - - - - - - - - - - - - - - - - - - - - - - - -

IN RE THE MARRIAGE OF:

DESPINA H. NGUYEN, Petitioner

and

TIEM-QUANG NGUYEN, Respondent

- - - - - - - - - - - - - - - - - - - - - - - - - - - -

THIS MATTER coming on to be heard for Permanent Orders on Petitioner's Motion for Dissolution of Marriage and having been heard by the Honorable Alvin D. Lichtenstein on April 15, 1982, and April 28, 1982, and having heard statements of counsel, testimony of the parties and other witnesses, having examined the Financial Affidavits of the parties, and having read and heard the Report of the Guardian Ad

Litem, and being fully advised in the premises, the Court doth find:

1. That the Court has subject matter and personal jurisdiction over the marriage and the parties of this action.

2. That one of the parties, the Petitioner, has been a domiciliary and resident of the State of Colorado for more than ninety (90) days preceding the filing of this action.

3. That the marriage between the parties is irretrievably broken, and that the Petitioner/Mother is a fit and proper person to have the custody of the minor child, and that the Respondent/Father is a fit and proper person, subject to his being educated in the culture of this country and being educated in this culture's way of raising children.

4. That the Guardian Ad Litem's fees in this case are in the amount of One Thousand Six Hundred Sixty-Seven Dollars (1,667.00) and that said fees are reasonable.

5. That there is no personal or real property owned by the parties.

6. That the Petitioner's maiden name of Despina Hiotis shall be restored to Petitioner.

7. That the Respondent shall have thirty (30) days from the date of the entry of this Order and Judgement to file a Motion for New Trial, only, however, if he retains counsel and is represented by an attorney at the time he files a Motion for New Trial.

AND, THEREFORE, the Court doth ORDER:

1. The custody of the minor child shall be awarded to the Petitioner/Mother.

2. The Respondent/Father shall have visitation for one and one-half (1-1/2) hours per week at a time consistent with his work schedule, and that said visitation is to be supervised by Donna Green at the rate of Thirty-Five ($35.00) per each one and one-half hours. Said cost of visitation is to be borne equally by the parties and is to be paid on a weekly basis. Visitation is to occur in the apartment of the Respondent/Father and said visitation is to be increased and hopefully ultimately shall be an unsupervised visit. The decision regarding any increase in visitation and for the need to revise this Order so that said visitations can be unsupervised shall be dependent upon the recommendations of the supervisor of visitation and the Guardian Ad Litem to the Court and its futher Order.

3. The Respondent shall pay as and for child support the amount of One Hundred Forty Dollars ($140.00) per month payable in two installments, the 15th and 30th of each month, commencing April 30, 1982, and payable each subsequent 15th and 30th of each month until further Order of Court. Said payments are to be made through the Registry of the Court.

4. The parties are to equally share in the payment of the Guardian Ad Litem's fees consistent with their ability to pay. However, each party shall make a payment of at least Fifty Dollars ($50.00) per month to the Guardian Ad Litem, and the Guardian Ad Litem shall have the right to petition this Court for relief if said payments are not made as pursuant to this Court's Order.

5. The marriage of the parties is hereby dissolved.

6. Neither party shall remove the minor child, Mary Tutam Thiep Nguyen, from the State of Colorado or the Country of the United States of America without further Order of Court.

7. The legal and official name of the minor child of the parties shall be Mary Tutam Thiep Nguyen.

8. The Petitioner's maiden name of Despina Hiotis shall be, and is hereby, restored to Petitioner.

9. The Respondent shall have thirty (30) days from the date of the entry of this Order and Judgment to file a Motion for New Trial

DONE AND SIGNED this 14th day of May, 1982. Nunc pro tunc April 28, 1982.

BY THE COURT:

_____

DISTRICT COURT JUDGE

APPENDIX B
COURT OF APPEALS
STATE OF COLORADO
2 East Fourteenth Avenue
Denver, Colorado 80203
(303) 861-1111

APPEAL FROM THE DENVER DISTRICT COURT TO THE COLORADO COURT OF APPEALS OPINION ANNOUNCED AND JUDGEMENT ENTERED DECEMBER 29, 1984 BEFORE J. BABCOCK.

| | | |
|---|---|---|
| DESPINA H. NGUYEN | ) | MANDATE |
| VS | ) | Court of Appeals Case No. 82 CA 1396 |
| THIEM-QUANG-NGUYEN | ) | Trial Court Case No. 80 DR 3262 |

THIS CAUSE came on to be heard on the record on appeal from the DISTRICT Court DENVER County of DENVER, and was argued by counsel, on consideration it is ordered that the JUDGMENT of said Court is AFFIRMED ORDER COSTS TAXED IN THE AMOUNT OF $75.00 FOR THE APPELLEE AND AGAINST THE APPELLANT, PER C.A.R. 39. FURTHER ORDER SAID COSTS BE PAID INTO REGISTRY OF DENVER DISTRICT COURT.

DATE: 7-17-84

MAC V. DANFORD
Clerk of the Court

COLORADO COURT OF APPEALS

No. 82CA1396

In re the Marriage of:

DESPINA H. NGUYEN,

Appellee,

and

TIEM-QUANG-NGUYEN,

Appellant.

Appeal from the District Court of the
City and County of Denver

Honorable Alvin D. Lichtenstein, Judge

DIVISION II
Opinion by JUDGE BABCOCK
Berman and Kelly, JJ., concur

JUDGMENT AFFIRMED

George Francis
Denver, Colorado

Attorney for Appellee

Danielson and Euser
Luke J. Danielson
Denver, Colorado

Attorneys for Appellant

Tiem-Quang-Nguyen, husband, appeals the final orders entered in this dissolution of marriage action. We affirm.

Husband, a Vietnamese, married wife, a Greek, on May 2, 1980. The parties lived together for one week. In June 1980, wife filed a petition for dissolution of marriage, and in September 1980, gave birth to a baby girl. The child's name was reflected on the birth certificate as "Tutam Thiep Nguyen."

During the hearing on final orders, the propriety of the child's name as reflected on the birth certificate was brought into question by husband during cross-examination of wife. In response to his questions, wife testified that she intended to name the child "Mary" but that husband had forged her signature on the birth certificate. Despite this, wife had always called the child "Mary."

Husband, when asked by the court to express his preference, testified that he preferred that

the child's name remain as shown on the birth certificate. His sole objection to addition of the name "Mary" was that it would cause inconvenience in connection with paperwork previously completed if placed first in sequence to the names already reflected on the birth certificate.

The attorney appointed to represent the child pursuant to Sec. 14-10-116, C.R.S. 1973, recommended that the name "Mary" be added to those names originally contained in the birth certificate as the child's first name. The basis for her recommendation was that the addition of "Mary" would ease childhood development in this country yet retain the child's Vietnamese heritage in her middle names and surname. On the basis of this testimony and because wife was the custodial parent, the court ordered that the name of the child be changed from "Tutam Thiep Nguyen" to "Mary Tutam Thiep Nguyen."

Husband contends that the trial court erred by changing the name of the child. In support of this contention, husband first argues that the trial court did not have jurisdiction to enter such order because the statutory precedure set forth under Sections 13-15-101, et seq., C.R.S. 1973, is the exclusive means by which a court may order a name change. We disagree.

The procedure for change of name set forth under Sections 13-15-101, et seq., C.R.S. 1973, is in addition to, not in exclusion of, the common law method for change of name. In re Change of Name of Knight, 36 Colo. App. 187, 537 P.2d 1085 (1975). Indeed, in dissolution of marriage actions, courts routinely restore the wife's former name upon request without requiring compliance with Sections 13-15-101, et seq., C.R.S. 1973, and they do so in the absence of express authorization therefore under the Uniform Dissolution of Marriage Act. Sections 14-10-101, et seq.,. C.R.S. 1973.

Because of the greater procedural safeguards attendant to a dissolution of marriage action and the breadth of the trial court's consideration of family relationships and economics we see no sound policy reason why power should not attach to consider a name change in this context. See Sec. 14-10-101, et seq., C.R.S. 1973; cf. Sections 13-15-101, et seq., C.R.S. 1973; Sections 25-2-115, C.R.S. 1973. Therefore,

we conclude that the trial court has the power, founded in common law, to order a change of name of a minor child of the parties in a dissolution of marriage action.

Although the power to do so is grounded in the common law, the court should consider those factors applicable to a statutory name change in determining whether to grant a parent's request. In In re Change of Name of Knight, supra, we held that a court has wide discretion in ordering a change of name and should not deny an application unless special circumstances were found to exist. We indicated that such a

special circumstance might exist if the change contributed to the estrangement of the child from a non-custodial parent who wishes to foster and preserve the parental relationship.

Here, there was no showing that the addition of the name "Mary" to the child's birth certificate would contribute to the estrangement of the child from the husband or undermine their parent-child relationship. The order reflects the change was intended to promote balance between the cultural heritage reflected by her middle and surnames and the ease by which she will be known in this society. The best interests of the child were fully protected by her court-appointed attorney who recommended the change. The order is measured by and in harmony with the best interests of the child. See Sec. 14-10-124, C.R.S. 1973. Therefore, we find no abuse of discretion in the trial court's order.

Husband also contends that wife's failure to amend her petition for dissolution of marriage to request the change of name precluded

consideration of the issue by the trial court. However, the record reflects no objection by husband to proceeding on this issue and shows that it was he who initially raised the issue on cross-examination of wife. Therefore, even though no formal amendment to the petition was made, the trial court did not abuse its discretion in considering the issue as it was tried by implied consent of the parties. See C.R.C.P. 15(b); Cady v. Fraser, 122 Colo. 252, 222 P.2d 422 (1950).

Husband contends for the first time on appeal that the court erred when it considered a written report of the child's court appointed attorney delivered just before the hearing on permanent orders and in denying his request for continuance. He argues he was denied his due process right of cross-examination. However, there is no such report or request for continuance in the record. The action of the trial court is presumed correct, and the burden is on husband to demonstrate error. Laessig v.

May D&F, 157 Colo. 260, 402 P.2d 183 (1965). And, statements in a brief are insufficient to establish a record where there is none. Hinshaw v. Dyer, 166 Colo. 394, 443 P.2d 992 (1968). Thus, we do not consider this contention.

Finally, husband contends that the court erred in its award of custody, visitation, child support, payment of visitation supervision fees, and payment of the child's attorney fees. We conclude that the trial court's rulings addressing these issues were within the broad discretion with which trial courts are imbued in such matters. See In re Marriage of McGee, 44 Colo. App. 330, 613 P.2d 348 (1980) (custody and visitation); Berg v. Berg, 189 Colo. 103, 536 P.2d 1135 (1975) (child support); Sec. 14-10-116, C.R.S. 1973 (child's attorney fees).

Being without legal or factual foundation, the other contentions of error are without merit.

Judgment affirmed.

JUDGE BERMAN AND JUDGE KELLY concur.

APPENDIX C

IN THE COURT OF APPEALS OF THE STATE OF COLORADO

Case Number 82 CA 1396

| | | |
|---|---|---|
| DESPINA H. NGUYEN | ) | |
| | ) | |
| Plaintiff-Appellee | ) | |
| | ) | |
| vs | ) | |
| | ) | |
| TIEM-QUANG-NGUYEN | ) | |
| | ) | |
| Defendant-Appellant | ) | ORDER |
| | ) | |
| | ) | |

Upon consideration of the Petition for Rehearing filed by the appellant, pro se herein, said Petition is hereby denied. Unless otherwise ordered, mandate will issue 3-1-84.

BY THE COURT,

DATED: 2-23-84

APPENDIX D

IN THE COURT OF APPEALS STATE OF COLORADO

Case No. 82 CA 1396

DESPINA H. NGUYEN,
Plaintiff-Appellee
vs
TIEM-QUANG-NGUYEN,
Defendant-Appellant

ORDER

Upon consideration of the Motion for Stay of Mandate filed in this case, it is ordered that issuance of the Mandate hereby be, and the same hereby is, stayed to and including March 26, 1984, provided that if Petition for Writ of Certiorari is timely filed with the Supreme Court of the State of Colorado, the stay shall remain in effect until disposition of the within cause by the Supreme Court.

FOR THE COURT OF APPEALS:

DATED: 2-28-84

APPENDIX E

SUPREME COURT, STATE OF COLORADO
CASE NO. 84SC112
CERTIORARI TO THE COLORADO COURT OF APPEALS,
NO. 82CA1396

---

ORDER OF COURT

---

In Re the Marriage of:

TIEM-QUANG-NGUYEN,,
Petitioners,

vs.

DESPINA H. NUGYEN,
Respondents.

---

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals, and after review of the record, the briefs, and the opinion of the Court of Appeals,

It Is This Day Ordered that said Petition for Writ of Certiorari shall be, and the same hereby is, Denied.

BY THE COURT, EN BANC, July 16, 1984.

JUSTICE QUINN would GRANT as to the following issue:

Whether petitioner's due process rights were violated when he was issued the written custody investigative report only minutes before the hearing on final orders.

cc: Tiem-Quang-Nguyen
10019 Beach Street
Federal Heights
Denver, CO 80221

George Francis, Esq.
670 Capital Life Center
Denver, CO 80203

Mac V. Danford, Clerk
Colorado Court of Appeals

APPENDIX F

(Trial Record Vol. I page 76)

0 80 003262 01-15-82
01-14-82
ADL

Courtroom 4 Judge Alvin D. Lichtenstien

Reporter Rebecca Sloan

Upon Ct's own motion

Ord: Case is referred to domestic relations staff of this court for an investigation and furnish this court with a written report on or before April 8, 1982.

# APPENDIX G

Guardian Ad Litem has confirmed with the pediatrician that the child is developing at a normal rate in all respects and that the child's ongoing medical check-ups are being provided by the mother.

## RECOMMENDATIONS

A. That custody of the minor child be granted to the Petitioner.

B. That the legal name of the minor child be Mary Tutam Thiep Nguyen.

C. That the court order that weekly visitation for a period of one and one-half hours continue to be supervised through Children's Hospital until said supervision is determined to no longer be required by this Court or the staff at Children's Hospital, with said visitation to be increased by

recommendation of Children's Hospital or further court order.

D. That the Respondent be restrained by court order from harrassing or disturbing the peace of the staff of Children's Hospital or any subsequently appointed institution which is to supervise visitation.

E. That both parties be responsible for paying on-half of all medical expenses and the Petitioner shall be responsible for providing copies of all said medical bills to the Respondent.

F. That any communication regarding the minor child occur between the parties and not other extended family members.

G. That Guardian Ad Litem is of the opinion that it would be in the best interests of the minor child for the natural father to

obtain a phychological evaluation with ongoing therapy.

H. That the court recommend that Respondent utilize the mental health services of Asian Pacific Development Center at 1840 East 18th Avenue, Denver, Colorado...

APPENDIX H

(Destroyed 10-20-82)

Case No. 80DR3262

| | | |
|---|---|---|
| Despina H. Nguyen<br>Plaintiff | ) | Denver District Court<br>Rm 33 City & County<br>Denver, CO 80202 |
| vs | ) | NOTICE |
| Tiem-Quang-Nguyen<br>Defendant | ) | |

TO ALL ATTORNEYS IN THE ABOVE CASE:

Notice is hereby given that all exhibits, depositions and transcripts in the above matter must be withdrawn within 30 days or they will be destroyed by Order of Court. The party making first demand will receive all exhibits, depositions and transcripts and will be responsible for appropriate distribution thereof.

Date: September 8, 1982

Dean A. Nakayama
Clerk of the Denver
District Court

PLEASE PRESENT THIS NOTICE WHEN CLAIMING EXHIBITS AND DOCUMENTS

DATE _____

_____
Attorney for Plaintiff

_____
Attorney for Defendant

APPENDIX I

COLORADO COURT OF APPEALS

8CA1396

| | | |
|---|---|---|
| DESPINA H. NGUYEN<br>Plaintiff-Appellee | ) | |
| vs | ) | AFFIDAVIT |
| TIEM-QUANG-NGUYEN<br>Defendant-Appellant | ) | |

I, Tiem-Quang-Nguyen, being first duly sworn, do state and affirm that I have requested: Kathy Hamilton (Clerk) and Rebecca Sloan (Reporter) will prepare for the Court of Appeals a record on appeal which shall include copies of the following:

1. Motions: ...
2. Orders of Court: ...
3. Judgment: ...
4. Report: Guardian Ad Litem's Report
5. Birth certificate of the child: ...

Dated this 15 day of February, 1983

_____

STATE OF COLORADO )
) ss
COUNTY OF _____ )

The foregoing Affidavit was subscribed to and sworn before me this 15 day of February 1983 by Tiem-Q. Nguyen.

APPENDIX J

(Vol. II P. 76 Trial Transcript)

MRS. COX: Your Honor, I made a recommendation, if I may, to have 'Mary" first and I have a reason for it. This is an American culture that this child is going to be growing up in, not in Vietnam and I just think that it would be easier for her for her classmates and friends and other people growing up if her name was Mary and hopefully using with pride, but maybe not have to explain them

THE COURT: All right. I'll have to make a resolution of that when I rule, but I understand your various positions.

# APPENDIX K

(Vol. II P. 59, Trial Transcript)

Q. Did you read Mrs. Cox' report:

A. She gave me one minute before the hearing, so I cannot read it, because that man called me, come here right away, so I don't have time to read it.

Q. You have the report?

A. Yes, but only one minute.

THE COURT: Did you read it?

THE WITNESS: No.

THE COURT: Did you try to read it?

THE WITNESS: I don't have the time, sir.

APPENDIX L

(Vol. III P. 6 Trial Transcript)

INTERPRETER: Mr. Nguyen said he cannot afford the expenses of the visit.

THE COURT: Then he better use his money that he uses for something else... your lack of knowledge of the culture of our country and how you raise children forces us to teach you to do things properly as we do them here...If I were in your country, I'd have to learn to be a judge in your country. Do you understand that? So, if you want to have visitation and you should have, you will do it as I ordered with this lady to show you how to change diapers or do the various other things as we do it here in the United States. Your child is being brought up in the United States and, therefore, it's our culture that you have to assimilate to.